

1969

*Present : Alles, J.*

N. DEVENDRAM, Appellant, and M. A. A. DE SILVA (Food and Price Control Inspector), Respondent

*S. C. 899/68—M. C. Negombo, 19177*

*Control of Prices Act—Offenders in profiteering cases—Sentence—Applicability of Criminal Procedure Code, s. 325.*

Section 325 of the Criminal Procedure Code can properly be applied in appropriate circumstances in cases of profiteering in contravention of the Control of Prices Act. The Regulation made on 27th November 1967 under section 5 of the Public Security Ordinance is no longer operative.

**A**PPEAL from a judgment of the Magistrate's Court, Negombo.

*Felix R. Dias Bandaranaike*, for the accused-appellant.

*Tivanka Wickramasinghe*, Crown Counsel, for the Attorney-General.

July 15, 1969. ALLES, J.—

Counsel for the appellant has not canvassed the facts in this case but only submitted that this is an appropriate case to which the provisions of Section 325 of the Criminal Procedure Code should be made applicable.

The short point that arises for consideration in this appeal is whether my decision in *Attorney-General v. Gunewardene*<sup>1</sup> in regard to the exclusion of Section 325 of the Criminal Procedure Code in profiteering cases should be followed. In *Attorney-General v. Gunewardene*, the Attorney-General appealed from an order of the Magistrate and submitted that when a person contravenes any provision of the Control of Prices Act as amended by Act 16 of 1966, the imposition of a term of imprisonment was obligatory, even in the case of a first offender. My order in that case was delivered on 21st May 1967 and in my view correctly set out the law as it stood on that date.

On 27th November 1967 a regulation was made under Section 5 of the Public Security Ordinance to the effect that Section 325 shall not apply to the case of persons charged with an offence under the Control of Prices Act as amended by Act 16 of 1966. Whatever may have been the intention of the Legislature in promulgating this regulation, it is submitted by counsel for the appellant that an argument can be urged that in introducing this regulation, the Legislature indicated that it was not certain prior to 27th November 1967 whether Section 325 had or had not any application to cases of profiteering instituted and concluded prior that date, in spite of my decision in *Attorney-General v. Gunewardene*

<sup>1</sup>(1967) 70 N. L. R. 68.

It was this doubt in regard to the intention of the Legislature that appears to have prompted Samerawickrame, J. in *Don Edirisinghe v. Alwis*,<sup>1</sup> the Chief Justice in *Podi Appuhamy v. The Food and Price Control Inspector, Kandy*<sup>2</sup> and Weeramantry J. in *Gunapala v. Wilson Silva*<sup>3</sup> to take the view that Section 325 could properly be applied in appropriate circumstances to cases of profiteering. Nor does it appear that Crown Counsel, who appeared for the Attorney-General in the above cases contended otherwise.

Judges of this Court have in recent times dealt with offenders in profiteering cases under Section 325. (*Vide* Wijayatilake, J. in S. C. 295/68, M. C. Colombo 48046, S. C. Minutes of 22.11.68 and de Kretser J. in S. C. 1070/68, M. C. Batticaloa 24128, S. C. Minutes of 28.5.69.) The emergency has now been lifted and the regulation of 27th November 1967 is no longer in operation.

For the above reasons, my decision in *Attorney-General v. Gunewardene* should not be followed.

This case appears to me to be one to which the provisions of Section 325 should be made applicable, in view of the youth of the offender. Crown Counsel, after investigation, has informed me that the appellant was a little over 14 years of age at the time of the commission of the offence. I therefore set aside the sentence of three (3) months' rigorous imprisonment imposed on the appellant and warn and discharge him.

Acting under Section 325 (3) of the Criminal Procedure Code, I direct him to pay Rs. 500 as costs of the proceedings. Subject to this variation in the sentence, the appeal is dismissed.

*Sentence varied.*

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